No. 72-1052

In the Supreme Court of the United States

OCTOBER TERM, 1972

ROGERS C. B. MORTON,
SECRETARY OF THE INTERIOR, PETITIONER

v.

RAMON RUIZ AND ANITA RUIZ

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Miscellaneous—Continued

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v.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the Secretary of the Interior, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The district court did not write an opinion. The opinion of the court of appeals (App. A, *infra*) is reported at 462 F. 2d 818.

JURISDICTION

The judgment of the court of appeals (App. B, *infra*) was entered on May 31, 1972. A timely petition for rehearing and suggestion of rehearing *en banc* was denied on August 31, 1972 (App. C, *infra*). On November 20, 1972, Mr. Justice Douglas extended the

time for the Secretary of the Interior to file a petition for certiorari to and including January 15, 1973, and on January 8, 1973, Mr. Justice Douglas granted a further extension to and including January 28, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Secretary of the Interior is required to provide general assistance benefits to Indians throughout the United States, contrary to the Secretary's established policy (on which Congress has based appropriations of funds) limiting such benefits to Indians and Indian families living on reservations in the United States or living in jurisdictions regulated by the Bureau of Indian Affairs in Alaska and Oklahoma.

STATUTES AND REGULATIONS INVOLVED

The Snyder Act, 42 Stat. 208, 25 U.S.C. 13, provides:

> The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes:
>
> General support and civilization, including education.
>
> For relief of distress and conservation of health.
>
> For industrial assistance and advancement and general administration of Indian property.
>
> For extension, improvement, operation, and

maintenance of existing Indian irrigation systems and for development of water supplies.

For the enlargement, extension, improvement and repair of the buildings and grounds of existing plants and projects.

For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees.

For the suppression of traffic in intoxicating liquor and deleterious drugs.

For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use.

And for general and incidental expenses in connection with the administration of Indian affairs.

The Appropriation Act for the Department of the Interior and related agencies for fiscal year 1968, Public Law 90–28, 81 Stat. 59, 60, provides in pertinent part:

BUREAU OF INDIAN AFFAIRS

EDUCATION AND WELFARE SERVICES

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; grants and other assistance to needy Indians; maintenance of law and order, and payment of rewards for information or evidence concerning violations of law on Indian reservations or

lands; and operation of Indian arts and crafts shops; $126,478,000.

66 Indian Affairs Manual provides in pertinent part:

> 3.1 *General Assistance*
>
> 1. *Purpose.* The purpose of the general assistance program is to provide necessary financial assistance to needy Indian families and persons living on reservations under the jurisdiction of this Bureau and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma.
>
> * * * * *
>
> .4 *Eligibility Conditions.*
>
> A. *Residence.* Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indians in Alaska and Oklahoma.

STATEMENT

The facts in this case were agreed upon.[1] Essentially, in 1940 respondents, who are Papago Indians and husband and wife, left the Papago Reservation and moved 15 miles away to Ajo, Arizona, a town populated principally by Papago employes of the Phelps-Dodge Company. In July 1967, some 27 years after they moved to Ajo, the mine in which Mr. Ruiz worked was closed by a strike. It remained closed until March 1968. During the strike Mr. Ruiz applied for Arizona welfare benefits, but as a striker he was

[1] The facts are accurately stated in the opinion below (App. A *infra*). We are lodging with the Clerk copies of the Agreed Statement of Facts, which is part of the record.

found ineligible. Respondents then sought federal Indian welfare benefits. After a hearing their claim was denied because neither of them lived on the reservation and they were thus ineligible for such benefits under the criteria specified by the Secretary of the Interior in the relevant provisions of the Department's Indian Affairs Manual (see p. 4, *supra*).

The district court, without opinion, granted summary judgment for the Secretary. Respondents appealed urging that the Secretary's restrictions on general assistance eligibility are invalid on both statutory and constitutional grounds. The court of appeals, one judge dissenting, reversed. Basing its decision on the Snyder Act, *supra*, it held "that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent" (App. A, *infra*, p. 29). The Secretary's petition for rehearing with suggestion of rehearing *en banc* was denied (App. C, *infra*).

REASONS FOR GRANTING THE WRIT

The court below has incorrectly interpreted the Snyder Act (*supra*, pp. 2–3) as prohibiting the long established policy of the Secretary of the Interior in allocating the limited funds available for Indian welfare assistance. By requiring payment of general assistance benefits to a broadened class of persons, the decision below would in effect substantially diminish funds available for the benefit of reservation Indians.

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The 1970 census listed the total Indian population of the United States (including Alaska) as 827,091.[2] The Department of the Interior's estimates for 1970 show 477,458 Indians living on or near Indian reservations and in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska.[3] Expansion of Indian welfare benefits to all Indians in the United States would thus approximately double the population from which eligible recipients would be drawn.

Since 1924 (Act of June 2, 1924, 43 Stat. 253, as amended, 8 U.S.C. 1401), all Indians who were born in the United States have been recognized as American citizens and consequently as citizens of the State in which they reside. Accordingly, all Indians, whether residing on or off a reservation, are entitled to social security and state welfare benefits equally with all other citizens of the State.[4] The benefits at issue in this case are benefits provided by the United States to Indians when state benefits are not avail-

[2] United States Department of Commerce, Bureau of Census, 1970 Census of Population, General Population Characteristics, United States Summary PC (1)—B1 table 48. These figures include 8,996 Indians living in Chicago, 12,160 living in New York City and 24,509 living in Long Beach and Los Angeles Metropolitan areas (table 67). The census figures are based on responses which do not refer to any particular definition of "Indian".

[3] Estimate of Resident Indian Population and Labor Force Status, March 1970. This figure includes Indians living in counties adjacent to Indian reservations.

[4] See *State ex rel. Williams* v. *Kemp*, 106 Mont. 444, 78 P. 2d 585; Cohen, *Handbook of Federal Indian law*, pp. 244–245 (1942 ed.); United States Department of the Interior, *Federal Indian Law*, pp. 285–287 (1958); Wolf, *Needed: A System of Income Maintenance for Indians*, 10 Ariz. L. Rev. 597 (1968).

able.[5] The policy of the Department of the Interior has been to reserve the limited funds available for such benefits for Indians living on reservations or in areas under Bureau of Indian Affairs jurisdiction in Oklahoma and Alaska.

1. The Snyder Act (*supra*, pp. 2–3), on which the court of appeals based its decision, provides in broad terms that "[t]he Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States * * *" for various purposes that the Act lists. The list of purposes is comprehensive and is obviously intended to include all activities of the Bureau of Indian Affairs (see pp. 2–3, supra).[6]

Included in the list of purposes is "general support" which is the subject of this litigation. The basic purpose of the Act is shown by its language to be not an attempt to narrow the broad discretion previously given the Secretary of the Interior over Indian affairs (see pp. 10–12, *infra*), but simply to serve as an *authorization* for any *appropriation* that Congress might subsequently pass.

That this was indeed the purpose of the Act is made clear by its legislative history. H. Rep. No. 275, 67th

[5] See *Wolf*, *supra*, 10 Ariz. L. Rev. at 608–609.

[6] A critic of the Act describes it as follows: "The Snyder Act is a familiar and somewhat distressing occurrence in the history of Indian affairs. As in other instances, Congress enacted a very general measure and left the rest up to the Secretary of the Interior and the BIA." *Wolf*, *supra*, 10 Ariz. L. Rev. at 607–608.

Cong., 1st Sess. (1921); S. Rep. No. 294, 67th Cong., 1st Sess. (1921); 61 Cong. Rec. 4659, *et seq.* As the following excerpts from that history show, the skeletal provisions of the Snyder Act were intended to limit neither the Secretary's authority nor Congress' own subsequent actions in passing appropriations.

As Representative Kelley, a member of the House Indian Affairs Committee and the first to speak after the bill was introduced, explained in speaking before the House sitting as Committee of the Whole, 61 Cong. Rec. 4659–4660:

> Mr. Chairman and gentlemen of the committee, this measure simply makes in order the items which have been carried for many years in the Indian appropriation bills. I helped to take a number of these items out of the last Indian bill through points of order, but it was the most futile effort possible, for they were reinserted in the Senate and in the end nothing was accomplished. I am opposed to legislating on the point-of-order principle, where one man can prevent action by the entire body, and therefore I shall not oppose this measure. * * *

This view of the Act's purpose was specifically corroborated and further explained by Representative Carter of Oklahoma, also a member of the Indian Affairs Committee, *id.* at 4671–4672 (emphasis added):

> Mr. Chairman and gentlemen of the Committee, in view of the turn that this debate has taken and the distance it has drifted afield, it might be well enough to call attention of gentlemen to what this bill really does. *This bill does not undertake the enlargement or creation of a*

single activity which is not now in operation by the Indian Bureau. It simply provides for making certain appropriations in order for activities which have been carried along from year to year by appropriations of money for that year without any specific authorization for the work.
* * *

But the difficulty is that no general authorization has been made for many of the Indian Bureau agencies. Like Topsy, "they just growed." An epidemic would break out on some certain *reservation* and without objection an item would be inserted in the current appropriation bill for its suppression and control. Next, certain Indians would be found wanting to farm but without necessary farming implements and stock, so an industrial item would be inserted and no point of order raised against that. Thus the system grew up, and these different agencies were established by the simple insertion of an appropriation in the annual appropriation act without the passage of any organic act authorizing them.

These appropriations were carried along from year to year as long as the Indian Committee had jurisdiction of appropriations without much friction. But when all appropriations were concentrated in the Committee on Appropriations then the fun began. Before this change the Indian Committee had both legislative and appropriating jurisdiction, and when that committee brought in these unauthorized items points of order were rarely insisted upon because no committee jurisdiction was transgressed and no other committee felt sufficiently aggrieved to kick up the row. When appropria-

> tion jurisdiction was taken away from the Indian Committee and the Appropriations Committee brought in their bill carrying those unauthorized propositions that constituted a clear invasion of committee jurisdiction, the Indian Committee rebelled and its membership * * * raised considerable fuss.

Any possible remaining doubt about the Act's purpose was then dispelled in the following colloquy, *id.* at 4672:

> Mr. ANDREWS. Will this bill do anything more than to prevent points of order on the Indian appropriation bill?
>
> Mr. CARTER. Absolutely nothing else. It does not start a single additional agency in the Bureau of Indian Affairs, it does not enlarge their activities, and does not create any new activities. It does nothing more than protect the committee reporting the bill against the whims and peevishness of some Member attacking the bill. * * *

The court of appeals' conclusion (see App. A, *infra*, pp. 19–20) that the Snyder Act has the substantive effect of requiring the Secretary not to distinguish between on and off reservation programs is, therefore, unfounded.

2. Title 25 of the United States Code contains most of the permanent laws relating to Indians in general. While the statutes found there contain rather detailed provisions concerning such matters as allotment of tribal lands (25 U.S.C. 331, *et seq.*), formation of tribal governments (25 U.S.C. 461, *et seq.*), lease and sale of Indian lands (25 U.S.C. 391, *et seq.*), and

descent and distribution of trust lands (25 U.S.C. 371, *et seq.*), there is no such detailed statutory provision for many of the social welfare programs of the Bureau of Indian Affairs. These programs are conducted under the general authorization of the Snyder Act and include the Bureau's law and order programs (25 C.F.R. 11), the Indian Business Development Fund (25 C.F.R. 80), and the general assistance and social welfare program at issue here (66 I.A.M. 3.0; *supra*, p. 4).[7] It is obvious that in the operation of these programs, the Secretary must devise rules concerning eligibility. His administrative authority to adopt appropriate regulations, while implicit in the Snyder Act, is also explicitly conferred in the Acts of July 9, 1832, 4 Stat. 564, as amended, 25 U.S.C. 2, and of June 30, 1834, Section 17, 4 Stat. 738, 25 U.S.C. 9.

None of the programs operated under the authority of the Snyder Act is designed to benefit directly every American Indian throughout the Nation. For example, the law and order regulations apply only to tribes in which the traditional agencies for enforcement of tribal laws and custom have broken down and for which no adequate substitute has been provided by federal or state law (25 C.F.R. 11.1 (b) and (c)); eligibility for grants from the Indian Business

[7] Some social welfare services are provided by the Bureau pursuant to statutes containing more specific and limited authority. 25 U.S.C. 271, *et seq.* contains detailed regulations on Indian Education, and 25 U.S.C. 305 authorizes the creation of the Indians Arts and Crafts Board. The Adult Indian Vocational Training Act of 1956, 25 U.S.C. 309, authorizes the Secretary to provide a vocational training program for adult Indians living on or near reservations.

Development Fund depends on whether the project is a profit-making enterprise generating jobs for Indians located on or near a reservation (25 C.F.R. 80.41); and eligibilty for the general assistance program itself requires unavailability of general assistance from State, county or local governments, and need, in addition to reservation residency (66 I.A.M. 3.1).

3. If the Court agrees with our view that the Snyder Act is merely an enabling Act, as its language indicates ("The Bureau of Indians Affairs * * * shall direct, supervise, and expend such moneys as Congress may from time to time appropriate * * *"), the relevant inquiry is whether Congress appropriated funds for off-reservation general assistance in the fiscal year at issue. The Appropriation Act itself gives no definition to the scope of the general assistance program. It merely states "[f]or expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States * * * grants and other assistance to needy Indians * * * $126,478,000." 81 Stat. 60, see p. 3, *supra*, for full text of this provision.

The legislative history, however, clearly shows that no monies were appropriated for off-reservation Indian welfare for fiscal year 1968, the year at issue here.[8] While congressional debates on the Department of the Interior appropriations for fiscal year 1968

[8] Nor was the situation different in recent prior or subsequent appropriation Acts, see discussion, *infra*.

do not mention general assistance, the hearings before both the House and Senate Committees contain a summary of the Bureau of Indian Affairs' requests for general assistance funds. The requests specify that "General assistance will be provided to needy Indians on reservations who are not eligible for public assistance under the Social Security Act * * * and for whom such assistance is not available from established welfare agencies or through tribal resources." Hearings on Department of the Interior and Related Agencies Appropriations for 1968, H. Subcommittee of the Committee on Appropriations, 90th Cong., 1st Sess., p. 777 (1967), and S. Committee on Appropriations, Hearings, 90th Cong., 1st Sess., p. 695 (1967).[9]

There is no indication in the relevant appropriation Acts or their legislative history that Congress intended to expand the Indian welfare program presented to it in the Department's budget request. Indeed, for fiscal year 1968, the Department sought $129,478,000 for

[9] The hearings for the preceding five years show identically worded requests. Hearings, S. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 8, H.R. 14215, Part I (fiscal 1967), p. 267; Hearings, H. Committee on Appropriations, 89th Cong., 2d Sess., Vol. 16, Interior Appropriations, Part I (fiscal 1967), p. 255; Hearings, S. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 7, H.R. 6767 (fiscal 1966), p. 653; Hearings, H. Committee on Appropriations, 89th Cong., 1st Sess., Vol. 15, Interior Appropriations, Part I (fiscal 1966), p. 747; S. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 11, H.R. 10433 (fiscal 1965), p. 148; Hearings, H. Committee on Appropriations, 88th Cong., 2d Sess., Vol. 17 (fiscal 1965), p. 775; Hearings, S. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 10, H.R. 5279 (fiscal 1964), p. 70; and Hearings, H. Committee on Appropriations, 88th Cong., 1st Sess., Vol. 16 (fiscal 1964), pp. 843, 844.

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Indian education and welfare services, and Congress appropriated only $126,478,000. Manifestly, Congress had no intention of substantially increasing the scope of existing and proposed service.

Moreover, Congress legislated in the light of the clear provision in the Department's manual limiting welfare payments to reservation Indians.[10] If Congress disapproved of this practice, it could have provided otherwise. But Congress took no such action. Thus its appropriation amounted to a ratification of the Department's clear practice. Cf. *United States* v. *G. Falk*

[10] The Bureau of Indian Affairs Welfare Program has been codified in its present manual form since May 12, 1952. It is clear that Congress was well acquainted with the scope of the program. In numerous hearings the scope of assistance was clearly brought out: See Hearings, H. Committee on Appropriations, 86th Cong., 1st Sess., Vol. 12, p. 800, *et seq.* (1960) on Department of the Interior appropriations, for fiscal 1960, Testimony of Miss Gifford, Assistant Commissioner of Indian Affairs (*id.* at 801).

"I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have never included in our request for welfare appropriations funds to take care of the needs of those Indians living off the reservation."

See, also, S. Committee on Appropriations, 85th Cong., 2d Sess., Vol. 6, H.R. 10746 (fiscal 1959), p. 291, *et seq.* And in earlier years, see H. Committee on Appropriations, 67th Cong., 4th Sess., pp. 184–185 (1922); S. Committee on Appropriations, 77th Cong., 1st Sess., H.R. 4590, Vol. 3, pp. 160–162, 465–466 (1941); S. Committee on Appropriations, 80th Cong., 1st Sess., H.R. 3123, Vol. 17, pp. 598–599 (1947); S. Committee on Appropriations, 81st Cong., 1st Sess., H.R. 3838, Part I, Vol. 8, pp. 483, 592 (1949); S. Committee on Appropriations, 82d Cong., 1st Sess., H.R. 3790, Vol. 8, p. 372 (1951).

& Brother, 204 U.S. 143, 152; *Old Mission Portland Cement Co.* v. *Helvering,* 293 U.S. 289, 293–294.

If the breadth of the class of recipients of federal Indian welfare benefits should be increased—and this is a matter of considerable current debate—the increase should result from an administrative or congressional decision coupled with an increased appropriation by Congress, not from a strained interpretation of a statute having a wholly different purpose.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JANUARY 1973.

APPENDIX A

United States Court of Appeals for the Ninth Circuit
No. 25,568

RAMON RUIZ AND ANITA RUIZ, PLAINTIFFS-APPELLANTS
v.
ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, DEFENDANT-APPELLEE

May 31, 1972

Appeal from the United States District Court
District of Arizona

Before: BARNES, MERRILL and KILKENNY, *Circuit Judges.*

KILKENNY, *Circuit Judge:*

Ramon and Anita Ruiz, appellants in this cause, are members of the Papago Tribe of American Indians. They reside with one of their children in Ajo, Arizona, some fifteen miles from the Papago Indian Reservation, The Ruiz home is in a section of Ajo known as the "Indian Village," where the community is predominantly of Papago origin.

Appellants left the Papago Reservation approximately thirty years ago to seek employment in the copper mines near Ajo, operated by the Phelps-Dodge Company. Ramon Ruiz worked in the copper mines until they were closed by a strike on July 19, 1967. Unable to obtain other employment, Ruiz sought welfare assistance from the state of Arizona. He was informed by the Pima County Welfare Director, how-

ever, that neither general assistance nor emergency relief from the Arizona Department of Public Welfare was available to striking union members.[1] At the time, the Ruiz family was receiving fifteen dollars per week from the union in the form of strike benefits.

On December 11, 1967, Ruiz applied for general assistance benefits from the Bureau of Indian Affairs [Bureau]. The Bureau notified appellants by letter of December 13, 1967, that such benefits were not available to them. Ruiz appealed to the Superintendent of the Papago Indian Agency, then to the Phoenix Area Director of the Bureau, and was granted a hearing before the latter on January 23, 1968. Under departmental regulations, general assistance benefits are made available only to those Papago Indians living within the boundaries of a reservation.[2] The Ruiz appeal was denied on January 25, 1968. The parties agree that the sole reason for the denial of general assistance benefits to appellants was the fact that they resided outside the boundaries of the Papago Reservation.

On February 19, 1968, appellants brought their action in federal district court to compel payment of general assistance benefits to them. The court, after a hearing on cross-complaints for summary judgment, dismissed the complaint and entered judgment in favor of the Secretary of the Interior. This appeal followed.[3]

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[1] *See*, 15 ARS § 46-233(A)(4) [Supp. 1971]; *see also*, letter of November 8, 1968, from Pima County Welfare Director Ever L. Hanson to appellants' attorneys.

[2] 66 *Bureau of Indian Affairs Manual* 3.1.4(A).

"*Residence.* Eligibility for general assistance is limited to Indians living on reservations and in jurisdictions under the Bureau of Indian Affairs in Alaska and Oklahoma."

[3] The Secretary does not raise the issue of mootness on this appeal: in any event, we note that the "continuing controversy"

Appellants contend that the policy of the Secretary and the Bureau is inconsistent with (1) Congressional intent to provide aid for needy Indians, and (2) constitutional due process.

The initial legislative approval of expenditures here characterized as "general assistance," the Snyder Act of 1921,[4] authorized the Bureau, as supervised by the Secretary of the Interior, to expend "such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians *throughout the United States.* * * *" [Emphasis supplied] In evaluating the Congressional intent that lay behind this enactment, we keep in mind the rule that statutes are to be given, wherever possible, "such effect that no clause, sentence or word is rendered superfluous, void, contradictory or insignificant." *Rockbridge* v. *Lincoln*, 449 F. 2d 567, 571 (9th Cir. 1971); *Richards* v. *United States*, 369 U.S. 1, 11 (1962).

The Snyder Act provides that benefits are to be available to Indians "throughout" the United States and, absent persuasive reasons to the contrary, courts will give statutory words their ordinary meaning. *Banks* v. *Chicago Grain Trimmers Ass'n.*, 390 U.S. 459, 465 (1968). The ordinary meaning of the preposition "throughout" is expansive,[5] and it is not the type of restrictive word Congress would presumably have utilized had it intended to limit general assistance to

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limitation on the mootness doctrine applies here. *Friend* v. *United States*, 388 F.2d 579, 581 (D.C. Cir. 1967); *Women Strike for Peace* v. *Hickel*, 420 F.2d 597, 604 (D.C. Cir. 1969); *cf.*, *Quevedo* v. *Collins*, 414 F.2d 796, 797 (5th Cir. 1969).

[4] 25 U.S.C. § 13, 42 Stat. 208 (1921).

[5] The preposition "throughout" is defined in *Webster's New International Dictionary*, 2d Edition, as follows: "All the way from one end to the other of; in or to every part of; during the whole course or period of; as *throughout* the house; *throughout* the year."

reservation Indians. There is nothing equivocal about the phrase "throughout the United States," nor do we find anything in the legislative history of the Act that counters its broad thrust.

Although, as the Secretary argues, it is evident that Congress did not intend to create new programs through passage of the Snyder Act, neither did it intend to constrict the Bureau's jurisdiction nor the scope of expenditures already being made by the agency.[6] It is not precisely clear what these earlier expenditures encompassed, but they included general funds for "numerous activities * * * undertaken in order to more speedily bring about the civilization of the Indian tribes. * * *"[7] It is clear, moreover, that the jurisdictional responsibility of the Bureau had traditionally extended beyond the borders of the reservation. The authority of the Commissioner of Indian Affairs substantially pre-dated the establishment of many reservations, and his jurisdictional mandate was sweeping.[8] Congressional interest in the general welfare of those Indian tribes not hostile to the United States was apparent in the period surrounding the creation of the commissioner's office,[9] and was reflected in the broad grant of authority to that office.

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[6] H.R. Rep. No. 275, 67th Cong., 1st Sess. (1921); S.Rep. No. 294, 67th Cong., 1st Sess. 52 (1921).

[7] Letter from Acting Secretary of the Interior, E. C. Finney, to Sen. Charles Curtis, Chairman of the Committee on Indian Affairs, August 19, 1921; S.Rep. No. 294, 67th Cong., 1st Sess. 52 (1921).

[8] The office of Commissioner of Indian Affairs was established in 1832, to have "the direction and management of all Indian affairs, and of all matters arising out of Indian relations. * * *" 4 Stat. 564, 22nd Cong., 1st Sess., Ch. 174 (1832).

[9] *Cf.*, 4 Stat. 564, 22nd Cong., 1st Sess., Ch. 174 § 4 (1832) [prohibition of "ardent spirits" in Indian country]; 4 Stat. 514, 22nd Cong., 1st Sess., Ch. 75 (1832) [making available supplies of smallpox vaccine to the Indian tribes]; 4 Stat. 616, 22nd

This legislative and administrative background supports the reading we have given the statute, applying the ordinary sense of its text. That background indicates Congressional concern extending to the general welfare of all Indians, irrespective of their place of residence. Our duty is to construe the Act in a fashion which best serves the clearly indicated legislative purpose, and we decline to adopt a narrow reading that would counter the wide responsibility that Congress has entrusted to the Bureau. *Hudson Distributors, Inc.* v. *Eli Lilly & Co.*, 377 U.S. 386 (1964); *Federal Trade Commission* v. *Fred Meyer, Inc.*, 390 U.S. 341 (1968); *Logan Lanes, Inc.* v. *Brunswick Corp.*, 378 F.2d 212 (9th Cir. 1967), *cert. denied*, 389 U.S. 898 (1967). Even if some uncertainty as to the construction of the Act existed, we would be compelled to resolve it in favor of the appellants.[10] Statutes, such as the Snyder Act, passed for the benefit of Indians and Indian communities, are to be liberally construed. *Rockbridge* v. *Lincoln, supra; Hopkins* v. *United States*, 414 F.2d 464 (9th Cir. 1969). In light of the foregoing, we conclude that Congress intended general assistance benefits to be available to all Indians, including those in the position of appellants, at the time the Snyder Act was passed.

Congressional action following the Snyder Act illustrates the continuing broad scope of responsibility lodged in the Bureau, with no indication of any de-

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Cong., 2d Sess., Ch. 40 (1833) [appropriations for Indian annuities]; 4 Stat. 705, 22nd (Cong., 2d Sess., Ch. 105 (1833) [appropriations of general benefits to "effect certain Indian treaties"].

[10] As the Supreme Court has stated in the context of unclear Congressional intent:

"Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection with good faith." *Squire* v. *Capoeman*, 351 U.S. 1, 6–7 (1956).

veloping policy to exclude nonreservation Indians. The House Report on the Johnson-O'Malley Act of 1934,[11] for example, asserted federal responsibility for the Welfare of those Indians intermixed with the general community, and concluded that it would be advantageous to permit certain health and educational services for those Indians to be transferred to state agencies for reasons of economical administration. The transfers were to impose no additional financial burden on the states, since the cost of providing services to the nonreservation Indians would be borne by the federal government. This report had the approval of the Commissioner of Indian Affairs, whose accompanying letter did not indicate any reticence to provide services for these off-reservation groups.[12] Later federal action in the area of welfare does not reveal any intent to displace the general assistance system of the Snyder Act, originally available to *all Indians*. The legislative history of the Social Security

[11] H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).

[12] "In many sections of the country there are many people of Indian blood who are so definitely a part of the general population that it is neither necessary nor wise for the Federal Government to deal with them on any segregated plan. In much of this rural area where Indians are living, educational, health, and other facilities are so limited that it is highly desirable for the Federal Government and the several States to combine resources wherever possible. This has been done in the field of education and has resulted in arrangements whereby many Indian children are attending local public schools successfully with whites. * * *

In the case of Indians living in widely scattered communities, we find it extremely difficult to render effective service and cooperative endeavors with State authorities which would help both Indians and whites living in these more isolated areas." Letter of February 26, 1934, from John Collier, Commissioner of Indian Affairs; *see* H.R. Rep. No. 864, 73d Cong., 2d Sess. (1934).

Act, to illustrate, is silent on that legislation's relationship to the Snyder Act. In sum, neither party has indicated to us a federal act usurping the jurisdiction of the Bureau over Indian welfare, granted in 1832 and reaffirmed by the Snyder Act.

Nor, for that matter, has the agency itself shown a less expansive attitude than Congress toward its jurisdiction in related areas of service. Scholarship funds are available to off-reservation students.[13] General assistance grants are available to those Indians in Alaska and Oklahoma not living on reservations.[14] Loans "to promote the economic development of the borrower" can be obtained by Indians and Indian groups without apparent regard for residency.[15] Health benefits, administered in conjunction with the Public Health Service are made available to off-reservation Indian groups.[16] Various Commissioners of the Bureau have proclaimed, in justifying their budget requests, that agency services extended to Indians on *or near* reservation,[17] and have used the total

[13] 25 C.F.R. § 32.1.

[14] 66 *Bureau of Indian Affairs Manual* 3.1.4(A).

[15] 25 C.F.R. § 91.

[16] Hearings on H.R. 6767, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 89th Cong., 1st Sess., pt. 1 at 999–1001 (1965); *cf.*, 42 C.F.R. § 36.12.

[17] *E.g.*, Commissioner Robert L. Bennett, Hearings on H.R. 17354, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 90th Cong., 2d Sess., pt. 1 at 368 (1968); Commissioner Philleo Nash, Hearings on H.R. 6767, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 89th Cong., 1st Sess., pt. 1 at 637 (1965).

In addition, testimony of various Bureau officials has indicated varying degrees of responsibility for off-reservation Indians. In 1959, Senator Mundt was told that from ten to

Indian population of the United States in citing the number of people their agency serves.[18] Needless to say, the Bureau cannot be permitted to expand and contract its jurisdiction to justify its own purposes at the expense of the group it aids.

Despite the foregoing, the Secretary's position is that Congress was well aware of the agency's limitation of general assistance to reservation Indians, and has acquiesced in agency policy by making appropriations limited to that group. We note that an administrative agency, such as the Bureau, has no

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twenty thousand Indians in Los Angeles alone were receiving general assistance, health insurance policies, and other services as part of the Bureau relocation program. Hearings on H.R. 5915, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 86th Cong., 1st Sess., at 337 (1959). Indians in other cities, whether part of the relocation program or not, were apparently receiving some assistance. *Id.*, at 338. In 1960, the House Committee on Appropriations was told that the Bureau assumes "some responsibility" for Indians living adjacent to reservations, as well as those on reservations, in its relocation program. Hearing on Bureau of Indian Affairs Budget, Before a Subcommittee of the House Committee on Appropriations, on Department of the Interior and Related Agencies Appropriations, 86th Cong., 2d Sess., pt. 1 at 512 (1960).

[18] Hearings on H.R. 5189, Before a Subcommittee of the Senate Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 85th Cong., 1st Sess. at 284 (1957); Hearings; Before a Subcommittee of the House Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 84th Cong., 2d Sess. at 460 (1956); Hearings, Before a Subcommittee of the House Committee on Appropriations on Interior Department Appropriations [Bureau of Indian Affairs], 82d Cong., 2d Sess., pt. 1, at 202 (1952); Hearings, Before a Subcommittee of the House Committee on

power to create a rule or regulation that is out of harmony with the statutory grant of its authority. *Dixon* v. *United States,* 381 U.S. 68, 74 (1965); *Brennan* v. *Stark,* 342 U.S. 451 (1952). Even if its position were consistent on the issue of responsibility for off-reservation Indians, there is no support in the statute for the distinction drawn by the agency. In our view, the intent of the Snyder Act is unambiguous, and the agency cannot amend it by regulation. *Koshland* v. *Helvering,* 298 U.S. 441 (1936).[19] Be that as it may, the legislative history does not reveal a clear-cut policy on the part of the Bureau toward off-reservation groups. The first formalized notice of its restrictive residence policy appeared on May 12, 1952, with the publication of the Indian Affairs Manual.[20] At times, both prior to and following the rule's publication, the Bureau seems to have accepted responsibility for those non-reservation Indians living close to the reservation, excluding only those Indians in large

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Appropriations; on Interior Department Appropriations [Bureau of Indian Affairs], 82d Cong., 1st Sess., 264–265 (1951).

[19] See Generally I. K. Davis, *Administrative Law Treatise,* §§ 5.01, *et seq.* (1958). Professor Davis notes that even long-standing regulations are not immune to scrutiny by the courts. Where an agency had excluded payments under the Social Security Act that the Supreme Court thought were included by Congress, the practice was overturned, as being beyond the limits of administrative interpretation. *Social Security Board* v. *Nierotko,* 327 U.S. 358 (1946).

[20] 66 *Bureau of Indian Affairs Manual* 3.1.4.(A). Unlike most of the regulations referred to herein, this residency restriction appears only in the Manual and does not appear in the Code of Federal Regulations. Apparently the agency is of the opinion that this section does not "relate to the public, including Indians." *See,* Introduction to *Bureau of Indian Affairs Manual,* § 1.2.

metropolitan centers.[21] At other times, Bureau officials seem to refer only to reservation Indians when discussing the services they offer.[22] By 1966, the Bureau

[21] Hearings on H.R. 10433, Before a Subcommittee of the Senate Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 88th Cong., 2d Sess. 227–228 (1964).

"Senator BIBLE. How many Indians do you have under your jurisdiction?

Mr. NASH. 380,000.

Senator BIBLE. How many nonreservation Indians do you have? Are those just reservation Indians?

Mr. NASH. These are *on or near*. This would not include, for example, Indians living in Los Angeles, San Francisco, Chicago, Denver, Minneapolis, *unless they were brought there as part of our vocational training or relocation programs.*" [Emphasis added.]

* * * * *

"Senator BIBLE. * * * where does your jurisdiction rest in that regard? Do you have a measuring stick [with regard to blood].

Mr. NASH. No, sir. Our basis for providing services to an Indian is primarily on real estate. That is, we service those individuals who reside on trust or restricted land, or so close to it that the program of the reservation would be affected by services not performed for that person."

[22] Hearings on Bureau of Indian Affairs Budget, Before a Subcommittee of the House Committee on Appropriations, on Interior Department and Related Agencies Appropriations, 86th Cong., 1st Sess., at 801 (1959):

"Miss GIFFORD. * * * I believe the question comes up concerning Indians living off the reservation and who are in need not for these categories [areas covered by Social Security] but for other types of assistance. In many cases the States and counties say that those Indians ought to be the responsibility of the Bureau of Indian Affairs; that they do not have sufficient funds to take care of them. We have *never* included in our request for welfare appropriations funds to take care of

was providing full welfare benefits for certain off-reservation groups, denying benefits entirely to other groups, and considering the provision of limited general assistance to still other groups.[23] This confusion over jurisdictional responsibility belies any assertion that there was a well-defined administrative position, known to and approved by Congress.[24] The Bureau

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the needs of those Indians *living off the reservation.*" [Emphasis added.]

[23] The Bureau was providing "100 percent of the needs" of an Indian person or family who moved to a new location under the Bureau relocation program. These services could extend up to three years in a state such as California, which had a three-year residency requirement at the time. Contract medical care was available to Indians remote from one of the Bureau facilities. A new program was recommended for offering complete health care services to Indians living in Rapid City, South Dakota, apparently prompted by the inquiries of Senator Mundt.

On the other hand, the Bureau was denying general assistance to Indians who relocated on their own, and presumably those in the category of appellants. Hearings on H.R. 14215, Before a Subcommittee of the Senate Committee on Appropriations, on Department of the Interior and Related Agenciess Appropriations, 89th Cong., 2d Sess., pt. 1, 295–302 (1966).

[24] The confusion over Bureau jurisdiction had not been cleared up as late as 1971. The following colloquy between Senator Bible and Mr. Bruce of the Bureau illustrates:

"Senator BIBLE. * * * Now what Indians are under your jurisdiction that you have a responsibiilty for?

First, give the qualifications. *I have never been quite sure who qualifies.* [Emphasis added.] I have heard one-sixth and one-eighth and one-thirty-second and all kinds. What rule do you use to determine who is under your jurisdiction? Who is under the jurisdiction of the Bureau of Indian Affairs?

Mr. BRUCE. American Indians living on reservations, one-fourth degree blood or more living in the United States and Alaska.

is capable of articulating its position on other policy matters for consideration and adoption by Congress.[25] It has not done so here.

Senator BIBLE. One-fourth degree or more is one of the qualifications. They must also live on a reseervation?

Mr. BRUCE. On or near.

INDETERMINATE DEFINITIONS OF "NEAR"

Senator BIBLE. What does the word "near" mean?

Mr. BRUCE. It is very difficult to define. *Near reservation would be a nearby community.* [Emphasis added.]

Senator BIBLE. Well, half a mile, 1 mile, 5 miles, 100 yards? I am just trying to find out what your jurisdiction is. You have some responsibilities. Now what are you responsible for?

Mr. BRUCE. They vary and that is why it is difficult to answer specifically.

Senator BIBLE. Well, give me the variable then. From 100 yards up to 10 miles?

Is that defined in a statute anywhere? If I was to become the Commissioner of Indian Affairs, God forbid, how would I know who I had jurisdiction over? They must make some determination.

Mr. BRUCE. There is a definition for Oklahoma, and Alaska.

* * * * *

Senator BIBLE. * * * what do your lawyers tell you is your jurisdiction? Can you go into the heart of Manhattan and find some Indian with one-fourth degree of Indian blood? Do you have jurisdiction over him in the heart of Manhattan?

Mr. BRUCE. No, sir; not over Manhattan."

Hearings on H.R. 9417, Before a Subcommittee of the Senate Committee on Appropriations, on Depatment of the Interior and Related Agencies Appropriations, 92d Cong., 1st Sess., pt. 1, at 751 (1971). *See also*, House Hearing on the same appropriations, generally.

[25] 66 *Bureau of Indian Affairs Manual* 3.1.4(B). The problem of duplication between federal and state welfare benefits, or other federal benefits administered by the states had been thoroughly aired, and Congressional approval of the Bureau's position is readily apparent.

We conclude that the Bureau has imposed unauthorized residency restrictions upon the availability of general assistance benefits, in excess of its authority and in contravention of Congressional intent. In so holding, we do not reach the constitutional due process question raised by appellants, and express no view on the issue of whether Congress could, if it so desired, limit general assistance benefits to reservation Indians.

We hold that, under the circumstances of this case, it was improper for the Bureau to deny general assistance benefits on the basis of residency alone.

The judgment is accordingly REVERSED and remanded to the district court with instructions to enter a judgment in conformity herewith.

MERRILL, *Circuit Judge,* Dissenting:

I dissent.

The question concerns the reasonableness of the construction effectively placed upon the Snyder Act by the regulation.[26] I do not find that construction to be unreasonable.

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[26] Great weight is to be attributed to a regulation of such long standing. *See Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). This court has similarly emphasized the deference owing to a regulation promulgated by an agency that is responsible for administration in the sphere in which the regulation operates. *See, e.g., Udall* v. *Battle Mountain Co.*, 385 F.2d 90, 94–96 (9th Cir. 1967), *cert. denied*, 390 U.S. 957 (1968).

Here, the regulation of the Bureau of Indian Affairs limiting general assistance benefits to Indians living on reservations (with exceptions for the special cases of Bureau jurisdictions in Alaska and Oklahoma), 66 Indian Affairs Manual 3.1.4(A), was first issued in 1952. The Bureau's policy reflected in the regulation has been repeatedly presented to Congress. *See, e.g.*, Hearings on H.R. 9029 Before Subcom. of Senate Appropriations Comm., 90th Cong., 1st Sess., pt. 1, at 695 (1967); Hearings on Dep't of Interior & Related Agencies Appropriations for 1968 Before Subcom. of House Appropriations Comm., 90th Cong.,

I think it important to note that the statute is simply one authorizing expenditures for the Indians. *See* S.Rep. No. 294, 67th Cong., 1st Sess. (1921); H. Rep. No. 275, 67th Cong., 1st Sess. (1921); 61 Cong.Rec. 4659, 4668–69, 4671–73, 4675, 4680, 4683–84 (1921). As

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1st Sess., pt. 1, at 777 (1967); Hearings on H.R. 14215 Before Subcom. of Senate Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 267, 298, 301–02 (1966); Hearings on Dep't of Interior & Related Agencies Appropriations for 1967 Before Subcom. of House Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 255 (1966); Hearings on H.R. 6767 Before Subcom. of Senate Appropriations Comm., 89th Cong., 1st Sess., pt. 1, at 653 (1965); Hearings on Dep't of Interior & Related Agencies Appropriations for 1966 Before Subcom. of House Appropriations Comm., 89th Cong., 1st Sess., pt. 1, at 747; Hearings on H.R. 10433 Before Subcom. of Senate Appropriations Comm., 88th Cong., 2d Sess., at 148 (1964); Hearings on Dep't of Interior & Related Agencies Appropriations for 1965 Before Subcom. of House Appropriations Comm., 88th Cong., 2d Sess., at 775 (1964); Hearings on H.R. 5279 Before Subcom. of Senate Appropriations Comm., 88th Cong., 1st Sess., at 70 (1963); Hearings on Dep't of Interior & Related Agencies Appropriations for 1964 Before Subcom. of House Appropriations Comm., 88th Cong., 1st Sess., at 843–44 (1963). *See also* Hearings on H.R. 10746 Before Subcom. of House Appropriations Comm., 88th Cong., 1st Sess., at 843–44 (1963). *See also* Hearings on H.R. 10746 Before Subcom. of Senate Appropriations Comm., 85th Cong., 2d Sess., at 292 (1958); Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcom. of House Appropriations Comm., 86th Cong., 1st Sess., at 801 (1959).

That the Bureau has provided assistance in various forms to off-reservation Indians, *e.g.*, through programs offering relocation, educational and health care services, should not alter, in my view, this court's assessment of the Bureau's policy with regard to general assistance benefits. *See* text and note 2 *infra*. Nor do I find the majority's discussion of *jurisdictional* uncertainty on the part of the Bureau to be relevant to the narrower issue presented here as to the limited character of the general assistance program.

such, it is quite naturally stated in the broadest terms and thus allows the Bureau of Indian Affairs to help Indians everywhere in the nation. As one commentator has noted, the Act was "intended merely as an authorization for general appropriations," with the specifics of administration left to the Secretary of the Interior and the Bureau. Wolf, *Needed: A System of Income Maintenance for Indians,* 10 Ariz.L.Rev. 597, 607–08 (1968).

But the granting of broad authority does not preclude (indeed, it seems to require) reasonable Bureau decisions as to how its limited funds may best be allocated and the drawing of reasonable classifications determining areas of greatest need. It does not to me seem an unreasonable determination that reservation Indians, who apparently have less employment opportunity, *see* Wolf, *supra,* at 598, and greater difficulty in obtaining state assistance, *see id.* at 599–606, 608–09, comprise a category particularly in need of ongoing, general financial assistance, while off-reservation Indians generally are in a better position to fend for themselves. Further, the difficulties of administering a system of general aid, if extended off reservations, would pose substantial problems.[27]

[27] *See, e.g.,* Hearings on H.R. 14215 Before Subcomm. of Senate Appropriations Comm., 89th Cong., 2d Sess., pt. 1, at 301–02 (1966); Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcomm. of House Appropriations Comm., 86th Cong., 1st Sess., at 801 (1959); Hearings on H.R. 10746 Before Subcomm. of Senate Appropriations Comm., 85th Cong., 2d Sess., at 292–93 (1958); Hearings on H.R. 3790 Before Subcomm. of Senate Appropriations Comm., 82d Cong., 1st Sess., at 372 (1951). General assistance benefits are provided as a residual supplementing other resources and public aid that may be available. 66 Indian Affairs Manual 3.1.3, 3.1.4(B); *See* Hearings on Dep't of Interior & Related Agencies Appropriations for 1960 Before Subcomm. of

As to the constitutional questions, which the majority found it unnecessary to reach, for the reasons stated I do not regard the classifications drawn as unreasonable and a denial of equal protection. *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

Nor do I find merit in appellants' contention that the regulation infringes their right to travel under *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). The question there was the right of those who had recently traveled to and established residence in a particular state or the District of Columbia to stand on an equal footing respecting welfare benefits with others similarly situated in their new place of residence. It did not suggest that the travelers could claim benefits equal to those who had chosen to stay behind.

Accordingly I would affirm.

House Appropriations Comm., 86th Cong., 1st Sess., at 801 (1959). Unlike other types of Bureau assistance, ongoing, general assistance if extended off-reservation would require extensive and continuous participation of Bureau field workers serving individual Indians everywhere.

APPENDIX B

United States Court of Appeals for the Ninth Circuit

No. 25568; DC No. 2408-Civ

RAMON RUIZ AND ANITA RUIZ, APPELLANTS

v.

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, APPELLEE

Appeal from the United States District Court for the District of Arizona.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is reversed and remanded with instructions.

A true copy.

Attest: September 7, 1972.

DENNIS R. MATHEWS, *Clerk.*

By S. E. MCKEESON, *Deputy.*

Filed and entered May 31, 1972.

APPENDIX C

United States Court of Appeals, Ninth Circuit

No. 25568

RAMON RUIZ AND ANITA RUIZ, FOR THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, APPELLANTS

v.

ROGERS C. B. MORTON, SECRETARY OF THE INTERIOR, APPELLEE

Appeal from the United States District Court District of Arizona

ORDER

Before: BARNES, MERRILL and KILKENNY, *Circuit Judges.*

The majority of the panel, as constituted, has voted to deny the petition for rehearing and to reject the suggestion for a rehearing in banc. Judge Merrill would grant a panel rehearing and, in absence thereof, would grant a rehearing in banc.

The full court has been advised of the suggestion for an in banc hearing. Although three members of the Court have requested a vote on the suggestion for rehearing in banc, no Judge has called for a vote in compliance with our General Order 15 (5).

Consequently, the petition for rehearing is denied and the suggestion for a rehearing in banc is rejected.

U.S. GOVERNMENT PRINTING OFFICE: 1973